



**Ninety-Ninth Legislature - First Session - 2005**  
**Committee Statement**  
**LB 619**

---

**Hearing Date:** February 4, 2005  
**Committee On:** Natural Resources

**Introducer(s):** (Schrock)  
**Title:** Adopt the Safety of Dams and Reservoirs Act

---

**Roll Call Vote – Final Committee Action:**

Advanced to General File  
X Advanced to General File with Amendments  
Indefinitely Postponed

---

**Vote Results:**

6	Yes	Senators Hudkins, Kopplin, Kremer, Louden, Schrock, Stuhr
0	No	
0	Present, not voting	
2	Absent	Senators McDonald, Smith

---

**Proponents:**

Jody Gittins  
Brian Dunnigan  
Marlin Petermann

Mark McGuire  
Paul Zillig  
Bob Hilske  
Doug Cook

**Representing:**

Introducer  
Department of Natural Resources  
Papio-Missouri River Natural Resources District;  
Nebraska Association of Resources Districts  
Crow Butte Resources  
Lower Platte South Natural Resources District  
Nemaha Natural Resources District  
Washington County Planning Department

**Opponents:**

None

**Representing:**

**Neutral:**

None

**Representing:**

---

**Summary of purpose and/or changes:**

LB 619 does the following:

Section 1 is the citation of the Act.

Sections 2 through 34 are definitions.

---

Section 35 is a statement of the general purpose of the Act.

Section 36 provides that a reservoir which falls under the Act must also obtain a water right.

Section 37 provides that villages, cities or counties may not have concurrent jurisdiction over dams falling under the Act.

Section 38 provides that plans, specifications, etc. must be prepared by an engineer.

Section 39 provides that liability for dam failure lies with the owner of the dam.

Section 40 provides that all findings and orders of the Department of Natural Resources under the Act are final and binding.

Section 41 provides that owners of dams must inform the department of a change in ownership.

Section 42 provides that livestock waste lagoons may be required to comply with the Act if the Department of Environmental Quality requires such.

Section 43 provides that an owner of a dam under the Act is not precluded from judicial recourse they are otherwise entitled to under law.

Section 44 provides that the department shall employ an engineer to carry out the provisions of the Act.

Section 45 provides that a board of consultants may be used to evaluate the design, etc. of a dam when required by the department or when requested by an applicant.

Section 46 provides that the department shall review and approve dam design, construction, etc. for the protection of life and property.

Section 47 provides that emergency action plans are required for high hazard potential dams.

Section 48 provides that the department may enter private property, upon notice, to carry out the duties assigned by the department under the Act.

Section 49 provides that the department may, or cause the owner to, make investigations regarding the safety of dams.

Section 50 provides that the department may take any administrative or legal action necessary for enforcement of the Act.

Section 51 provides that the department may promulgate rules and regulations necessary to comply with the Act.

Section 52 provides that construction of a dam may not commence until an application and approval are obtained by the department.

Section 53 provides that before commencing reconstruction, alteration, abandonment, breach or removal of a dam, the owner must file an application and obtain approval from the department.

Section 54 provides timeframes for departmental approvals and commencement of operations.

Section 55 provides for an application filing fee.

Section 56 creates a cash fund for use by the department.

Sections 57, 58, and 59 provide that upon completion of work on a dam the owner shall file a completion certification signed by the design engineer and an approval to operate will be issued by the Department upon finding that the dam is safe.

Section 60 provides that approvals to operate shall contain terms and conditions as may be needed, and that an approval to operate may be revoked finding that the dam is unsafe and after holding a public hearing.

Section 61 provides that the department shall investigate complaints regarding the safety of a dam and cause the owner to take corrective actions if the department finds the dam to be unsafe.

Section 62 provides that the department may make inspections of construction work on a dam and cause the design engineer to provide adequate supervision of the construction work. The department may cause the design to be altered during construction as necessary and, if finding that the work is not being done in accordance with the plans, compel the owner to bring the work into compliance.

Section 63 provides for the keeping of records of work performed on a dam, allows the department to accept the design approvals and inspections of dams under a federal dam safety program, and adopt rules and regulations.

Section 64 provides the authority for the department to inspect dams and establish an inspection schedule based on the dam hazard classification.

Section 65 places primary responsibility on the owner of a dam to determine when an emergency exists and provide notification to those in danger and to the department. If needed, in emergency situations, the department can take remedial actions including taking control of the dam.

Section 66 provides for a penalty for failure to comply with the Act.

Section 67 provides for notification to the owner if there is reason to believe that the Act has been violated and an opportunity to respond or request a hearing. The department

may issue a temporary cease and desist order pending a hearing, issue a final order, and authorize the department to obtain judicial relief if an order has not been complied with.

Section 68 provides for a civil penalty for violations of the Act.

Section 69 provides for an appeal of a final order or decision of the department.

Section 70 provides that existing dams which have not been previously approved by the department must comply with the provisions of the Act, allows the department to inspect such dams, issue approvals to operate, and upon finding the dam unsafe hold a hearing on the matter.

Sections 71 through 76 harmonize provisions.

Section 77 and 78 repeal changed and obsolete sections.

**Explanation of amendments, if any:**

The Committee amendment strikes the original portions of LB 619 for clarity. The amendment incorporates all of the original portions of LB 619 with clarification modifications. There were so many of these clarifications that the Committee felt it would be in the best interest of the legislative body to simply have everything in a single document. The main clarification was to strike department oversight of “repair or repairs” of dams, which occurred in approximately twenty-two different pages in the original bill, which contains 38 pages.

Substantive additions to LB 619 are contained in Section 11 (2) (d), Section 37 (3); Section 46 (3), Section 63 (2) (d).

Section 11 (2) (d) excludes from the definition of dam water storage or evaporation ponds regulated by the United States Nuclear Regulatory Commission.

Section 37 (3) allows a city, village or county to institute overlay zoning precluding construction of structures downstream of a state-permitted dam that is classified as having other than a high hazard potential if there is a determination that construction of these structures would require the dam to be reclassified as having a high hazard potential.

Section 46 (3) states that the owner who has entered into a cooperative agreement pursuant to subdivision (2) (d) of section 63 shall be deemed to be in compliance with the act.

Section 63 (2)(d) allows the Department of Natural Resources to enter into a cooperative agreement with an owner who is required to comply with a federal dam safety program that has objectives, standards, and requirements that meet or exceed the purposes of the Safety of Dams and Reservoirs Act.

Section 1 creates the Safety of Dams and Reservoirs Act.

Section 2	applies the definitions which follow in Sections 3 through 34 as being applicable to the act.
Section 3	Abandonment is rendering a dam incapable of impounding and creating a watercourse around the site.
Section 4	Adverse consequences are negative impacts that may occur upstream, downstream, or at the locations remote from the dam which including loss of life, economic losses, and lifeline disruption.
Section 5	Alterations are alterations that directly affect the safety of the dam, but do not include maintenance to retain the initial structural integrity.
Section 6	Application approval is a written authorization from the department for the construction, reconstruction, enlargement, alteration, breach, removal or abandonment of a dam. The approval may specify conditions or limitations on the work.
Section 7	Approval to operate is a written authorization from the department to an owner who has completed construction, reconstruction, enlargement or alteration of a dam.
Section 8	Appurtenant works are structures such as spillways, the reservoir and its rim, low level outlet works and water conduits such as penstocks, tunnels or pipelines either through the dam or its abutments.
Section 9	Breach is a partial removal of a dam creating a channel through the dam to the natural elevation of the stream.
Section 10	Completion certification is a statement from the design engineer that certifies that the dam was constructed according to the approved specifications.
Section 11	Dam is any artificial barrier which is twenty-five feet in height <u>or</u> which retains fifty acre-feet or more, <u>except</u> any barrier which is six feet in height or less <u>or</u> which retains fifteen acre feet or less is exempt unless it can be classified as a high hazard potential dam. A dam does not include obstructions in canals used to raise or lower water elevation, roadway and railroad structures unless they serve as a dam, or canals and levees.
Section 12	Days are consecutive calendar days, including Sundays and holidays.
Section 13	Department is the Department of Natural Resources.
Section 14	Director is the Director of the Department of Natural Resources.

- Section 15      Emergencies are breaches and all conditions leading to or causing a breach or any conditions which threaten loss of life.
- Section 16      Engineer is a Nebraska registered professional engineer, competent in dam engineering, who has at least four years of experience in dam engineering, and who understands the consequences of dam failure.
- Section 17      Enlargement is any change in a dam which raises or may raise the water storage elevation of water impounded by a dam.
- Section 18      Hazard potential classification is a classification of dams based on the incremental adverse consequences of misoperation or failure of a dam, but does not reflect the current condition of the dam.
- Section 19      High hazard potential dam is a dam which, if misoperated or fails, the loss human life is probable.
- Section 20      Incremental is the difference in impacts between the misoperation or failure of a dam and the impacts that would occur without misoperation or failure of the dam.
- Section 21      Low hazard potential dam is a dam which if misoperated or fails would result in no probable loss of human life and in low economic or environmental losses.
- Section 22      Maximum storage is the total capacity of the reservoir between the top of the dam or the maximum routed flood and the lowest outside elevation of the dam.
- Section 23      Minimal hazard potential dam is a dam which if misoperated or fails would likely result in no economic loss beyond the cost of the structure and the owner's property.
- Section 24      Normal storage is the reservoir storage capacity, without flood storage or freeboard allowances.
- Section 25      Owner is any federal department or agency; any state department, agency or political subdivision, municipal or quasi-municipal corporations, public utilities, any district, any natural person, any duly authorized agent lessee or trustee of any entity listed as an owner, and any receiver or trustee appointed by a court for any entity listed as an owner.
- Section 26      Person is any individual, partnership, limited liability company, association, public or private corporation, trustee, receiver, assignee, agent, municipality, other political subdivision, public agency, or other legal entity or any officer or governing or managing body of any public or private corporation, municipality, other political subdivision, public agency, or other legal entity.
- Section 27      Probable means likely to occur and reasonably expected.

- Section 28 Probable maximum flood is the most severe flood that is considered probable at a given site.
- Section 29 Reconstruction is partial or complete removal and replacement of a dam.
- Section 30 Removal is the complete elimination of a dam embankment or structure and rehabilitating the site.
- Section 31 Reservoir is any basin which contains water or water borne materials by virtue of such materials having been impounded by a dam.
- Section 32 Significant hazard potential dam is a dam such that misoperation or failure would result in no probable loss of human life but could result in major economic loss, environmental damage, or disruption of lifeline facilities.
- Section 33 Storage elevation is the elevation of the reservoir surface at any given volume of impoundment.
- Section 34 Top of dam elevation is the maximum design elevation for the top of the dam including freeboard allowances, not taking into consideration of settlement due to consolidation of the foundation and embankment.
- Section 35 The purpose of the Safety of Dams and Reservoirs Act is to regulate all dams and reservoirs for the protection of public health, safety and welfare and to minimize the adverse consequences associated with the potential failure of dams and reservoirs.
- Section 36 provides that a reservoir which falls under the Act must also obtain a water right. A water right is required for all storage facilities except for storage facilities which impound less than fifteen acre-feet and do not divert water out of the facility or release water from the facility for downstream use unless such use is solely for the purpose of watering range livestock. A water right is also not required for impoundments which are solely for holding, managing or disposing of animal or human waste.
- Section 37 (1) provides that villages, cities or counties may not pass ordinances or resolutions providing for the regulation, supervision, construction, reconstruction, enlargement, repair, alteration, operation, breach, removal, abandonment, or impounding capacity of a dam if such action would conflict with the power and authority of the state under the Safety of Dams and Reservoirs Act.  
(2) villages, cities, or counties may adopt ordinances and resolutions regulating or supervising dams and reservoirs not within the state's jurisdiction and which are not subject to regulation, owned, or operated by another public agency or body, or which apply only to adjacent structures not germane to the safety of the dam, such as, but not limited to roads and fences.

- Section 38 provides that plans and specifications for construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams shall be the responsibility of an engineer assisted by qualified engineering geologists and other specialists as necessary.
- Section 39 (1) provides that no action can be brought against the state or department for the recovery of damages caused by the partial or total failure of any dam by reason of control and regulation of the dam pursuant to the Safety of Dams and Reservoirs Act including, but not limited to:
- (a) design and construction application approval of the dam or approval of interim flood routing plans during construction, reconstruction, enlargement, repair, alteration, maintenance, operation, breach, removal or abandonment;
  - (b) the issuance of enforcement orders relative to maintenance or operation of the dam;
  - (c) control and regulation of the dam;
  - (d) measures taken to protect against failure of the dam during an emergency, except for negligent acts of the department in assuming control of a dam during an emergency; or
  - (e) failure to act.
- (2) provides that the Safety of Dams and Reservoirs Act does not relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of a dam.
- Section 40 provides that all findings and orders of the department under the Act are final and binding.
- Section 41 provides that owners of dams must inform the department of a change in ownership.
- Section 42 provides that livestock waste lagoons may be required to comply with the Act if the Department of Environmental Quality requires such.
- Section 43 provides that an owner of a dam under the Act is not precluded from judicial recourse they are otherwise entitled to under law.
- Section 44 provides that the department shall employ an engineer to carry out the provisions of the Act.
- Section 45 provides that when safety and technical considerations pertaining to an application approval, approval to operate, or the plans and specifications require it, or when requested by the owner, the department shall appoint a consulting



board of three or more consultants to report to the department on the safety features involved. If such board is appointed at the request of the owner, the expenses of the consulting board shall be paid by the owner.

Section 46 (1) provides that the department shall review and approve dam design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of all dams in the state for the protection of life and property; and (2) provides that no person shall construct, reconstruct, enlarge, alter, breach, remove, or abandon any dam without approval of the department.

Section 47 provides that the owner of high hazard potential dams shall develop and periodically test and update an emergency action plan and the department may require such emergency action plans for significant hazard potential dams. Such emergency actions plans shall include, but not be limited to:

- (a) emergency notification plan with flowchart;
- (b) a statement of purpose;
- (c) a project description;
- (d) emergency detection, evaluation, and classification;
- (e) general responsibilities;
- (f) preparedness;
- (g) inundation maps or other acceptable description of the inundated area;
- (h) appendices.

The department shall review, evaluate for adequacy, and approve or disapprove each emergency action plan submitted. Emergency action plans developed for dams under a federal dam safety program shall be accepted by the department.

Section 48 provides that the department may enter private property, upon notice, to carry out the duties assigned by the department under the Act.

Section 49 provides that the department may, or cause the owner to, (1) make investigations regarding the safety of dams, including advances in safety practices elsewhere, as may be needed for a proper review and study of the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams; (2) make such watershed investigation and studies necessary to keep abreast of developments affecting runoff and peak storm discharges in the vicinity of a dam; and (3) make such seismic investigations necessary to keep abreast of developments affecting the seismic stability of a dam. These requirements are included to ensure that the latest technological and scientific information are utilized to ensure the protection, safety and welfare related to dams.

Section 50 (1) provides that the department may take any administrative or legal action necessary for enforcement of the Act;

(2) provides that an action or proceeding may be initiated whenever an owner

(a) fails to comply with the requirements of the act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department; and

(b) commits or allows the commission of violations of the act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department; and

(3) provides that an action or proceeding shall be initiated administratively or in a court of jurisdiction in which

(a) the dam, area of hazard potential or some part thereof exists; or

(b) the person named in the complaint has its principal place of business; or

(c) where the person named in the complaint resides.

Section 51 provides that the department may promulgate rules and regulations containing standards for the design, inspection, construction, reconstruction, enlargement, alteration, breach, removal, and abandonment of dams to carry out the purposes of the Act. Such rules and regulations may include, but are not limited to:

(a) standards and criteria for the siting and design of dams, considering both existing and projected conditions which may affect the safety of a project during its construction and operational life;

(b) requirements for operation of dams, including operational plans to be prepared and implemented by the owner;

(c) requirements for monitoring inspection, and reporting of conditions affecting the safety of dams; and

(d) requirements for emergency action plans to be prepared and implemented by owners in cooperation with emergency management authorities.

For dams classified as high or significant hazard potential the department may consider:

(a) the state of scientific and technological knowledge and good engineering practices relating to various types of dams;

(b) the economic impact of a failure of a structure upon the state and its citizens;

(c) the relationship of dams in hydrologic management in the watershed as a whole.

Section 52 provides that:

(1) construction of any new dam may not commence until an application and approval are obtained by the Department.

(2) a separate application for each dam shall be filed with the department upon forms provided by the department. All plans and specifications must be signed and sealed by the design engineer.

(3) the application shall provide the following information:

- (a) the name and address of the owner;
- (b) the name and address of the applicant, if different from the owner;
- (c) the name and address of the operator or other person to be contacted regarding arrangements for inspections or other matters associated with the dam;
- (d) the location, type, size, purpose, and height of the proposed dam;
- (e) the reservoir surface areas and associated storage capacity at elevation intervals not exceeding two feet;
- (f) plans for proposed permanent instrument installations in the dam;
- (g) the area of the drainage basin, rainfall records, streamflow records, and flood flow records and estimated, if available;
- (h) maps and design drawings showing plans, elevations, and section of all principal structures and appurtenant works with other features of the project in sufficient detail, including design analysis, to determine safety, adequacy and suitability of design;
- (i) the estimated construction cost of the dam; and
- (j) such other information as the department requires.

(4) the department may, when in its judgment it is necessary, also require:

- (a) data concerning subsoil and rock foundation conditions and materials involved in the construction of the dam;
- (b) investigations of, and reports on, subsurface conditions, exploratory pits, trenches and adits, drilling, coring, and geophysical tests to measure in place and in the laboratory the properties and behavior of foundation materials at the dam site;
- (c) investigations and reports on the geology of the dam site, possible geologic hazards, seismic activity, faults, weak seams and joints, availability and quality of construction materials, and other pertinent features; and
- (d) other appropriate information.

(5) if an application is incomplete or defective, it shall be returned to the applicant to complete or correct the defects. The applicant must return the application to the department within ninety days, or within such additional time as the

department may allow. If the applicant fails to return the application within such time period, it shall be dismissed.

Section 53 provides that (1) before commencing reconstruction, alteration, abandonment, breach or removal of a dam, such that it no longer constitutes a dam, the owner must file an application and obtain approval from the department; (2) the application shall give such pertinent information or data concerning the dam as may be required by the department; (3) the application shall give the name and address of the applicant and shall adequately detail, with appropriate references to the existing dam, the proposed reconstruction, alteration, abandonment, breach, or removal of the dam. The application shall be accompanied by plans and specifications signed and sealed by the design engineer. The department may waive any of the requirements of this section if the requirements are unnecessary for the application approval; (4) if the application is incomplete or defective, it shall be returned to the applicant for correction, and the applicant shall return the application within ninety days, or such additional time as be allowed by the department. Failure to return the application within the allowed time period will result in the application being dismissed; (5) in case of emergency in which the department declares that repairs or breaching of the dam is necessary to safeguard life and property, repairs or breaching shall be commence immediately by the owner or by the department at the owners expense. The department shall be notified within twenty-four hours of emergency repairs or breaching when instituted by the owner; and (6) proposed repairs or breaching shall conform to any orders issued by the department.

Section 54 provides timeframes and conditions for departmental approvals and commencement of operations. (1) Approval of applications which do not require a water right approval shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. The department may hold one or more public hearings on an application. (2) Approval of applications for which a water right is required shall not be issued until all pending matters before the department under the Act or the water rights permitting process have been resolved and approved. Approvals under the Act and under the water rights permitting process shall be issued simultaneously. (3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property. (4) Actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment must be commenced within the time established by the department or the approval becomes void. The department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment. (5) Written notice shall be provided to the department at least ten days prior to the commencement of construction, reconstruction, enlargement, alteration, breach, removal, or abandonment.

Section 55 provides for an application filing fee. The filing fee for construction, reconstruction, enlargement, alteration, breach, removal, or abandonment shall be

established by rule and regulation but shall not exceed (a) two hundred dollars for a dam less than twenty-five feet in height, (b) three hundred dollars for a dam twenty-five feet in height to not more than fifty feet in height, and (c) four hundred dollars for a dam in excess of fifty feet in height. The filing fee must accompany the application.

Section 56 creates a Cash Fund for use by the department for the Dam Safety Program. The fund shall consist of fees credited pursuant to Section 55 of the Act and any money specifically appropriated by the Legislature. Money in the fund shall not be subject any fiscal year limitation or provision of lapse of unexpended balance at the end of any fiscal year or biennium. The fund shall be administered by the department for costs incurred by the department in the administration of the Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Section 57 provides that:

(1) upon completion of a new or reconstructed dam and reservoir or the enlargement of a dam and reservoir, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter signed and sealed by the design engineer, showing or describing the work as actually completed. Such supplementary material may include, but need not be limited to:

- (a) a record of all geological boreholes and grout holes and grouting;
- (b) a record of permanent location of points, benchmarks, and instruments embedded in the structure;
- (c) a record of test of concrete or other material used in the construction, reconstruction, or enlargement of the dam; and
- (d) a record of initial seepage flows and embedded instrument readings.

(2) in the case of the enlargement of a dam, the supplementary drawings and descriptive matter need only apply to the new work.

(3) an approval to operate shall be issued by the department upon a finding that the dam is safe to impound within the limitations prescribed in the application approval. No impoundment by the structure shall occur prior to issuance of the approval to operate.

Section 58 provides that (1) upon completion of the alteration of a dam, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter, as determined by the department, signed and sealed by the design engineer showing the work as actually completed; and (2) an

approval to operate shall be issued by the department upon finding that the dam is safe to impound within the limitations prescribed in the application approval. Pending issuance of a new or revised approval to operate, the owner shall not cause the dam to impound beyond the limitations prescribed in the existing application approval.

- Section 59 provides that (1) upon completion of the removal, breach, or abandonment of a dam, the design engineer shall file with the department a completion certification; (2) before final approval of the removal of a dam is issued, the department may inspect the site and determine that all work was accomplished in substantial conformance with the application approval; and (3) following removal of a dam, the department may report such removal to the National Performance of Dams Program and the National Inventory of Dams.
- Section 60 provides that approvals to operate shall contain terms and conditions as may be needed and that an approval to operate may be revoked finding that the dam is unsafe and after holding a public hearing.
- Section 61 provides that the department shall investigate complaints regarding the safety of a dam and cause the owner to take corrective actions if the department finds the dam to be unsafe.
- Section 62 provides that (1) during the construction, reconstruction, enlargement, alteration, removal, breach, removal, or abandonment of any dam the department may make periodic inspections for the purpose of ascertaining compliance with the approved plans, shall require the owner to direct the design engineer to provide adequate supervision of the work and to provide sufficient information to enable the department to determine that conformity with the approved plans is being attained; (2) if after inspection or investigation of the work or at any time prior to issuance of an approval to operate, the department finds that modifications or changes are necessary to ensure the safety of the dam, the department shall order the owner to revise their plans. The owner may, pursuant to Section 45 of the Act, request an independent consulting board to review the order of the department; (3) if at any time the department finds that the work is not being done in accordance with the approved plans, the department shall deliver a written notice of noncompliance to the owner. Such notice shall be delivered by personal service or registered mail and shall state the particulars in which the approved plans are not being or have not been complied with, and shall order immediate compliance with the approved plans. The department may order that no further work be done until such compliance has been effected and approved by the department; and (4) failure to comply with a notice provided for in subsection (3) may cause revocation of the application approval by the department. If compliance with the notice has not occurred within sixty days after the date of the notice, the department shall order the incomplete structure removed sufficiently to eliminate any safety hazard to life.

- Section 63 provides that the department shall require owners to keep original records and any modification to construction available and in good order. The department may:
- (a) adopt such rules and regulations and issue such orders as necessary to secure adequate maintenance, operation, and inspection by owners;
  - (b) require engineering and geologic investigations to safeguard life and property; and
  - (c) accept design approvals and reports of equivalent inspections prepared for dams under a federal dam safety program.
- Section 64 provides the authority for the department to inspect dams and establish an inspection schedule based on the dam hazard classification and site performance history. The normal inspection frequency shall be annually for high hazard potential dams, biennially for significant hazard potential dams, every five years for low hazard potential dams, and every five years or more for minimal hazard potential dams. The department may conduct additional inspections at any time. If serious safety concerns are found by the department during inspections, the department shall require the owner to conduct tests and investigations sufficient for the department to determine the condition of the dam. After review of the tests or investigations, the department may require modification, removal or breach of the dam or alteration of operating procedures to restore or improve the safety of the dam and may require installation of instrumentation to monitor the performance of the dam. The department may report the results of dam inspections that determine unsafe conditions or noncompliance to the National Performance of Dams Program.
- Section 65 places primary responsibility on the owner of a dam to determine when an emergency exists. When the owner determines that an emergency exists, the owner shall immediately implement the emergency action plan, notify any persons who may be endangered if the dam should fail, notify emergency management organizations in the area, take necessary remedial action to prevent or mitigate the consequences of failure, and notify the department. The department shall take any remedial action necessary to protect life and property if either (a) the condition of the dam is so dangerous as to not permit time for the issuance and enforcement of an order relative to maintenance or operation; or (b) the passing of imminent floods or other conditions threaten the safety of the dam. In applying the remedial means provided for in this section, the department may, in an emergency, with its own forces or by other means at its disposal:
- (a) take full charge and control of the dam;
  - (b) lower the water level by releasing water from the reservoir;
  - (c) completely drain the reservoir;
  - (d) perform any necessary remedial or protective work at the site; or
  - (e) take such other steps as may be essential to safeguard life and property.



The department shall continue in full charge and control of such dam until they are rendered safe or the emergency has ceased and the owner is able to take back full charge and control. The department's taking full charge and control of a dam does not relieve the owner of such dam of liability for any negligent act of the owner. The department may report emergency actions to the National Performance of Dams Program.

- Section 66 provides (1) that any violation of the Act or of any application approval, approval to operate, order, rule, regulation, or requirement of constitutes a Class V misdemeanor. Each day of violation constitutes a separate offense; (2) any person who willfully obstructs, hinders, or prevents the department from performing the duties imposed by the Act commits a Class IV misdemeanor; and (3) any owner or person who engages in the construction, reconstruction, enlargement, alteration, breach, removal or abandonment of any dam or who does work on or permits work to be done a dam without approval of the department or in violation of the Act and who fails to notify the department immediately of such commits a Class V misdemeanor.
- Section 67 provides (1) if the department has reason to believe that an owner or other person is violating or has violated the Act, an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department, the department shall give the owner or person written notice by certified mail that the owner or person appears to be in violation of the Act. The owner or person shall have thirty days from the mailing of the notice to respond or to request a hearing as to why the owner or person should not be ordered to cease and desist from the violation; (2) if the department finds that an owner or person is constructing, reconstructing, enlarging, altering, breaching, removing or abandoning a dam without having first acquired application approval, the department shall issue a temporary order for the owner or person to cease and desist. The temporary order shall include written notice by certified mail to the owner or person of the time and date set by the department for a hearing to show cause why the temporary order should be vacated; (3) after response to a notice or a hearing pursuant to subsections (1) or (2) of this section or after the expiration of time to request a hearing, the department shall issue a final decision and final order. The decision and final order may include a determination of violation, a cease and desist order, the recommendation of a civil penalty, and an order directing that steps be taken to abate or ameliorate any harm or damage arising from the violation. The owner or person affected by the final decision may appeal the decision to the Nebraska Court of Appeals; and (4) if the owner or person continues the violation after the department has issued a final decision or a temporary order, the department may apply for a temporary restraining order or preliminary or permanent injunction from a court of competent jurisdiction.
- Section 68 provides (1) for a civil penalty for violations of the Act. Any person who violates the Act, or an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department may be assessed a civil penalty in an amount not to exceed five hundred dollars per day for each day the violation



continues; (2) the department shall bring an action to recover a penalty imposed under this section in a court in the jurisdiction in which the violation occurs; and (3) in determining the amount of penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or willful, the past conduct of the defendant, whether the defendant has taken steps to cease, remove, or mitigate the violation, and any other relevant information.

Section 69 provides for an appeal of a final order or decision of the Department directly to the Nebraska Court of Appeals.

Section 70 provides that (1) every owner of a dam subject to the Act that was completed prior to the effective date of the Act and not previously approved by the department when departmental approval was otherwise required shall file an application with the department for approval of such dam; (2) a separate application shall be required for each such dam and shall include such appropriate information concerning the dam as the department requires; (3) the department may give notice, by certified mail to the owner's last address of record, to the owner of dams required under this section to file an application who or which have failed to do so, and failure to file within sixty days after receipt of such notice shall be punishable as provided in the Act; (4) the department may make inspections of such dams and may require the owners of such dams to perform, at the owner's expense, such work or tests as may be required to disclose information sufficient to enable the department to determine whether to issue an approval to operate or to issue orders directing further work necessary to safeguard life and property. The department may require the owner to lower or drain the reservoir; (5) if, upon inspection or upon completion to the satisfaction of the department of all work ordered, the department finds that the dam is safe to impound, an approval to operate shall be issued; and (6) if at any time the department finds that such dam is not safe to impound, the department shall notify the owner in writing and shall set a time and place for hearing on the matter. The owner of such dam shall ensure that such dam does not impound following receipt of such notice. The written notice shall be mailed at least thirty days prior to the date set for hearing. Any interested person may appear and present their view and objections to the proposed action.

Sections 71 through 76 harmonize provisions.

Sections 77 and 78 repeal changed and obsolete sections.

---

**Senator Ed Schrock, Chairperson**